

JUDGE LEISURE

Matthew S. Schultz (MSS 1518)

CONNELL FOLEY LLP

888 7th Avenue, Suite 3401

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(212) 262-2390

Attorneys for Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOSE A. MENDEZ,

Plaintiff,

v.

MILBANK 2723 WEBB, LLC, MILBANK
VENTURES, INC. AND TGY REALTY,
LLC,

Defendants.

Civil Action No. 08 CV 01234
ECF Case

**ANSWER TO VERIFIED COMPLAINT,
AFFIRMATIVE DEFENSES, AND
DEMAND FOR TRIAL BY JURY**

Defendants, Milbank 2723 Webb, LLC , a Delaware limited liability company with its principal place of business located in Los Angeles, California, and Milbank Ventures, Inc., a Delaware corporation with its principal place of business located in Los Angeles, California, (collectively "Defendants") by way of answer to the Verified Complaint filed by plaintiff, hereby say:

1. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 1 of the Verified Complaint.
2. Defendants deny the allegations set forth in Paragraph 2 of the Verified Complaint.

3. Defendants deny the allegations set forth in Paragraph 3 of the Verified Complaint. Defendant Milbank 2723 Webb, LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California. Defendant Milbank Ventures, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

4. Defendants admit the allegations set forth in Paragraph 4 of the Verified Complaint.

5. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 5 of the Verified Complaint.

6. Defendants deny the allegations set forth in Paragraph 6 of the Verified Complaint.

7. Defendants admit the allegations set forth in Paragraph 7 of the Verified Complaint. Defendant Milbank Ventures, Inc., is a corporation organized under the laws of the State of Delaware, with its principal place of business in Los Angeles, California.

8. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 8 of the Verified Complaint.

9. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 9 of the Verified Complaint.

10. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 10 of the Verified Complaint.

11. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 11 of the Verified Complaint.

12. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 12 of the Verified Complaint.

13. Defendants are without knowledge sufficient to admit or deny the allegations set forth in Paragraph 13 of the Verified Complaint.

14. Defendants deny the allegations set forth in Paragraph 14 of the Verified Complaint. By deed dated April 23, 2007, defendant Milbank 2723 Webb LLC took title to premises being known as and by the street number 2723 Webb Avenue, Bronx New York, also identified as Lot 169, Block 3248.

15. Defendants deny the allegations set forth in Paragraph 15 of the Verified Complaint.

16. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 16 of the Verified Complaint.

17. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 17 of the Verified Complaint.

18. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 18 of the Verified Complaint.

19. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 19 of the Verified Complaint.

20. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 20 of the Verified Complaint.

21. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 21 of the Verified Complaint.

22. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 22 of the Verified Complaint.

23. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 23 of the Verified Complaint.

24. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 24 of the Verified Complaint.

25. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 25 of the Verified Complaint.

26. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 26 of the Verified Complaint.

27. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 27 of the Verified Complaint.

28. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 28 of the Verified Complaint.

29. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 29 of the Verified Complaint.

30. Defendants deny the allegations set forth in Paragraph 30 of the Verified Complaint.

31. Defendants deny the allegations set forth in Paragraph 31 of the Verified Complaint.

32. Defendants deny the allegations set forth in Paragraph 32 of the Verified Complaint.

33. Defendants are without knowledge and information sufficient to admit or deny the allegations set forth in Paragraph 33 of the Verified Complaint.

34. Defendants deny the allegations set forth in Paragraph 34 of the Verified Complaint.

35. Defendants deny the allegations set forth in Paragraph 35 of the Verified Complaint.

SEPARATE DEFENSES

FIRST SEPARATE DEFENSE

Plaintiff(s)' Verified Complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE

Plaintiff(s)' Verified Complaint is barred by the applicable statute of limitations.

THIRD SEPARATE DEFENSE

At the time and place alleged in the Verified Complaint, Defendants violated no legal duty, whether imposed by statute, administrative code or common law, owing to plaintiff(s).

FOURTH SEPARATE DEFENSE

At the time and place alleged in the Verified Complaint, Defendants were not guilty of any negligence, wrongful act, or default which was a proximate cause of any injury or damages complained of by plaintiff(s).

FIFTH SEPARATE DEFENSE

The damages alleged by plaintiff(s) were solely and proximately caused by the alleged negligence and/or intentional conduct of third parties over whom Defendants had no direction or control.

SIXTH SEPARATE DEFENSE

Plaintiff(s)' Verified Complaint, in whole or in part, is barred by the doctrine of comparative negligence.

SEVENTH SEPARATE DEFENSE

Defendants reserve the right to move to dismiss the Verified Complaint on the grounds that it fails to set forth a cognizable legal cause of action.

EIGHTH SEPARATE DEFENSE

Defendants reserve the right to move to dismiss the Verified Complaint on the grounds that plaintiff(s) has failed to join a necessary party to the within action and, accordingly, the Court has no jurisdiction to grant the relief asserted by plaintiff(s).

NINTH SEPARATE DEFENSE

Defendants reserve the right to move to dismiss the Verified Complaint for insufficient process.

TENTH SEPARATE DEFENSE

That any sums or consideration paid or promised to plaintiff(s) by any person(s) or entity(ies) claimed to be liable for the injuries or damages alleged in the Verified Complaint shall reduce any judgment rendered in favor of plaintiff(s) as against Defendants to the extent of the greater of either the sums or consideration paid or promised to plaintiff(s) or the amount of the released tortfeasor's(s') equitable share(s) or the damages in accordance with General Obligation Law Section 15-108.

ELEVENTH SEPARATE DEFENSE

That any verdict in the within action for past, present and future medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, should be

reduced by the amount that any such expense has or will with reasonable certainty be replaced or indemnified in whole or in part from any collateral source, in accordance with the provisions and limitations of Section 4545(c) of the CPLR.

TWELFTH SEPARATE DEFENSE

The damages allegedly sustained by plaintiff(s), to the extent plaintiff(s) may be able to prove any injuries and/or damages, said damages were proximately caused by intervening and/or superseding acts and/or fault of the plaintiff(s) and/or persons over whom the Defendants had not control or right of control and for whose actions Defendants are not liable.

THIRTEENTH SEPARATE DEFENSE

The personal injuries alleged to have been sustained by plaintiff(s) were caused in whole or in part as a result of the culpable conduct attributable to plaintiff(s), including, but not limited to, plaintiff(s)' contributory negligence and/or assumption of the risk. Pursuant to Article 14-A of the CPLR, Defendants seeks a reduction of any recovery had by plaintiff(s) in the proportion which the culpable conduct attributable to plaintiff(s) or any co-defendant bears to the culpable conduct which caused the damages.

FOURTEENTH SEPARATE DEFENSE

Upon information and belief, at the time and place alleged in the Verified Complaint, any damages or injury caused to plaintiff(s) was the result of plaintiff(s)' own unpreventable misconduct.

FIFTEENTH SEPARATE DEFENSE

To the extent that plaintiff has failed to mitigate, minimize or avoid any damages they allegedly sustained, any recovery against USB must be reduced by that amount.

SIXTEENTH SEPARATE DEFENSE

Defendants, at the time period alleged in the Complaint, did not control, own, maintain, operate or make special use of the instrumentality, object or portion of the premises which is the subject of this litigation, which plaintiff's claim resulted in the alleged injuries and/or damages complained of in the Complaint.

SEVENTEENTH SEPARATE DEFENSE

If it is shown that plaintiff was caused to sustain injuries and/or damages as a result of any substance, object or condition, claimed by plaintiff to have caused and/or contributed to the incident upon which the Complaint is based, such substance, object or condition was created, introduced or caused by persons or parties unknown to Defendants and over whom Defendants exercised no authority or control and that Defendants did not have prior notice of the existence of such substance or condition.

EIGHTEENTH SEPARATE DEFENSE

If plaintiff was caused to sustain injuries and/or damages as a result of any object or condition claimed by plaintiff to have caused and/or contributed to this accident, such object or condition, the existence of which is or may be denied by Defendants was in plain sight, open and obvious, and had plaintiff exercised due care, using sight and senses as a reasonable person, plaintiffs would completely avoided the alleged injuries and/or damages.

NINETEENTH SEPARATE DEFENSE

USB does not owe a duty of indemnity by way of common law, contract or otherwise, for any of the matters referred to in the Complaint.

TWENTIETH SEPARATE DEFENSE

The liability of Defendants is limited under the terms of Article 16 of the CPLR.

TWENTY-FIRST SEPARATE DEFENSE

Defendants reserves the right to amend their Answer to the Verified Complaint to assert such additional defenses, cross-claims or counterclaims as may become apparent during the continuing course of discovery in this matter. In addition, Defendants reserve the right to amend its Answer to assert additional affirmative defenses to the extent that the law of the State of New York changes or develops requiring such amendment.

CROSS-CLAIM AGAINST CO-DEFENDANTS

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., allege that if plaintiff(s) were caused to sustain damages through any carelessness, recklessness or negligence other than plaintiff(s)' own, then said damages arose in whole or in part from the acts or omissions of co-Defendants. If judgment is recovered herein by plaintiff(s) against Defendants, then Milbank 2723 Webb, LLC and Milbank Ventures, Inc., will be damaged and co-Defendants will be bound to indemnify and/or contribute to Defendants in whole or in part by reason of its responsibility for the alleged occurrence.

ANSWER TO ALL CROSS-CLAIMS

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., deny each and every allegation contained in any and all Cross-claims filed or to be filed against them and leaves such cross-claimants to their proofs as to all issues.

DEMAND FOR TRIAL BY JURY

Defendants, Milbank 2723 Webb, LLC and Milbank Ventures, Inc., hereby demand a trial by jury as to all issues.

CONNELL FOLEY LLP
Attorneys for Defendants,
Milbank 2723 Webb, LLC and Milbank Ventures,
Inc.,

By: 
Matthew S. Schultz

Dated: February 4, 2008

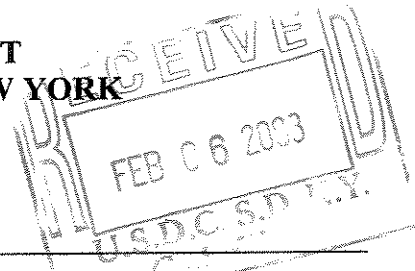
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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



JOSE A. MENDEZ

Plaintiff,

v.

MILBANK 2723 WEBB, LLC, MILBANK
VENTURES, INC. AND TGY REALTY, LLC

Defendants.

Civil Action No. _____

(HONORABLE _____)

FEDERAL RULE OF CIVIL
PROCEDURE
7.1 DISCLOSURE STATEMENT

Upon information and belief, defendant, Milbank 2723 Webb, LLC, is a privately owned entity. Upon information and belief, defendant Milbank Ventures, Inc. is a privately owned entity. Further upon information and belief, no other publicly held corporation owns 10% or more of the stock of either defendant.

A handwritten signature in black ink, appearing to read "Matthew S. Schultz".

Matthew S. Schultz (MS1518)
CONNELL FOLEY LLP
Attorneys for Defendants,
Milbank 2723 Webb, LLC and Milbank
Ventures, Inc.
888 7th Avenue
New York, New York 10106
(212) 262-2390

Dated: February 5, 2008

JS 44C/SDNY
REV. 12/2005

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS Jose A. Mendez

DEFENDANTS Milbank 2723 Webb, LLC, Milbank Ventures, Inc. and TGY Realty, LLC

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael A. Ruiz, Esq., 61 Broadway, Suite 2820,
New York, NY 10006

ATTORNEYS (IF KNOWN)

Matthew S. Schultz, Esq., c/o Connell Foley LLP, 85
Livingston Avenue, Roseland, NJ 07068
(973 525 0500)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Plaintiff alleges severe personal injuries. Removal from State Court pursuant to 28 U.S.C. Section 1332.

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes? ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

			ACTIONS UNDER STATUTES				
			TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
CONTRACT	PERSONAL INJURY	PERSONAL INJURY	[] 610 AGRICULTURE	[] 422 APPEAL	[] 400 STATE		
[] 110 INSURANCE	[] 310 AIRPLANE	[] 362 PERSONAL INJURY -	[] 620 FOOD & DRUG	28 USC 158	REAPPORTIONMENT		
[] 120 MARINE	[] 315 AIRPLANE PRODUCT	MED MALPRACTICE	[] 625 DRUG RELATED	[] 423 WITHDRAWAL	[] 410 ANTITRUST		
[] 130 MILLER ACT	LIABILITY	[] 365 PERSONAL INJURY	SEIZURE OF	28 USC 157	[] 430 BANKS & BANKING		
[] 140 NEGOTIABLE	[] 320 ASSAULT, LIBEL &	PRODUCT LIABILITY	PROPERTY		[] 450 COMMERCE/ICC		
INSTRUMENT	SLANDER	[] 368 ASBESTOS PERSONAL	21 USC 881		RATES/ETC		
[] 150 RECOVERY OF	[] 330 FEDERAL	INJURY PRODUCT	[] 630 LIQUOR LAWS	PROPERTY RIGHTS	[] 460 DEPORTATION		
OVERPAYMENT &	EMPLOYERS'	LIABILITY	[] 640 RR & TRUCK	[] 820 COPYRIGHTS	[] 470 RACKETEER INFLU-		
ENFORCEMENT OF	LIABILITY		[] 650 AIRLINE REGS	[] 830 PATENT	ENCED & CORRUPT		
JUDGMENT	[] 340 MARINE	PERSONAL PROPERTY	[] 660 OCCUPATIONAL	[] 840 TRADEMARK	ORGANIZATION ACT		
[] 151 MEDICARE ACT	[] 345 MARINE PRODUCT	[] 370 OTHER FRAUD	[] 690 OTHER		(RICO)		
[] 152 RECOVERY OF	LIABILITY	[] 371 TRUTH IN LENDING		SOCIAL SECURITY	[] 480 CONSUMER CREDIT		
DEFAULTED	[] 350 MOTOR VEHICLE	[] 380 OTHER PERSONAL	LABOR	[] 861 MIA (1395FF)	[] 490 CABLE/SATELLITE TV		
STUDENT LOANS	[] 355 MOTOR VEHICLE	PROPERTY DAMAGE	[] 710 FAIR LABOR	[] 862 BLACK LUNG (923)	[] 810 SELECTIVE SERVICE		
(EXCL VETERANS)	PRODUCT LIABILITY	PROPERTY DAMAGE	STANDARDS ACT	[] 863 DIWC (405(g))	[] 850 SECURITIES/		
[] 153 RECOVERY OF	[x] 360 OTHER PERSONAL	PRODUCT LIABILITY	LABOR/MGMT	[] 864 DIWW (405(g))	COMMODITIES/		
OVERPAYMENT OF	INJURY		RELATIONS	[] 864 SSID TITLE XVI	EXCHANGE		
VETERAN'S BENEFITS			[] 730 LABOR/MGMT	[] 865 RSI (405(g))	[] 875 CUSTOMER		
[] 160 STOCKHOLDERS SUITS			REPORTING &		CHALLENGE		
[] 180 OTHER CONTRACT			DISCLOSURE ACT		12 USC 3410		
[] 195 CONTRACT PRODUCT			RAILWAY LABOR ACT	FEDERAL TAX SUITS	[] 891 AGRICULTURE ACTS		
LIABILITY			OTHER LABOR	[] 870 TAXES	[] 892 ECONOMIC		
[] 196 FRANCHISE			LITIGATION	[] 871 IRS-THIRD PARTY	STABILIZATION ACT		
			[] 791 EMPL RET INC	20 USC 7809	[] 893 ENVIRONMENTAL		
			SECURITY ACT		MATTERS		
	ACTIONS UNDER STATUTES	PRISONER PETITIONS			[] 894 ENERGY		
REAL PROPERTY	CIVIL RIGHTS	[] 510 MOTIONS TO			ALLOCATION ACT		
[] 210 LAND CONDEMNATION	[] 441 VOTING	VACATE SENTENCE			[] 895 FREEDOM OF		
[] 220 FORECLOSURE	[] 442 EMPLOYMENT	28 USC 2255			INFORMATION ACT		
[] 230 RENT LEASE &	[] 443 HOUSING	[] 530 HABEAS CORPUS			APPEAL OF FEE		
EJECTMENT	[] 444 ACCOMMODATIONS	[] 535 DEATH PENALTY			DETERMINATION		
[] 240 TORTS TO LAND	[] 445 WELFARE	[] 540 MANDAMUS & OTHER			UNDER EQUAL ACCESS		
[] 246 TORT PRODUCT	AMERICANS WITH	[] 550 CIVIL RIGHTS			TO JUSTICE		
LIABILITY	DISABILITIES -	[] 555 PRISON CONDITION			[] 950 CONSTITUTIONALITY		
[] 290 ALL OTHER	EMPLOYMENT				OF STATE STATUTES		
REAL PROPERTY	[] 446 AMERICANS WITH				[] 890 OTHER STATUTORY		
	DISABILITIES -OTHER				ACTIONS		
	[] 440 OTHER CIVIL RIGHTS						

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: ☒ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(SEE REVERSE)

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☐ 1 Original Proceeding
 ☒ 2a. Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ 2b. Removed from State Court
 AND at least one party is a pro se litigant

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

IF DIVERSITY, INDICATE
CITIZENSHIP BELOW.
(28 USC 1332, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	<input type="checkbox"/> 3	<input type="checkbox"/> 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 2	<input type="checkbox"/> 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 4	<input type="checkbox"/> 4	FOREIGN NATION	<input type="checkbox"/> 6	<input type="checkbox"/> 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Jose A. Mendez, Bronx County, New York

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Milbank 2723 Webb, LLC and Milbank Ventures, Inc.
660 S. Figueroa Street, 24th Floor
Los Angeles, California 90017

TGY Realty, LLC
36-08 30th Avenue
Astoria, NY 11103

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ FOLEY SQUARE
(DO NOT check either box if this is a PRISONER PETITION.)

DATE 2/4/08 SIGNATURE OF ATTORNEY OF RECORD

ADMITTED TO PRACTICE IN THIS DISTRICT

☐ NO☒ YES (DATE ADMITTED Mo. 8 Yr. 2004)

Attorney Bar Code # 1518

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)